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Conciliation : The End of Compulsory Boards
La fin du recours obligatoire aux commissions de conciliation

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Aller au sommaire du numéro

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Résumé de l'article

« Nous recommandons de retenir, au second stade d'intervention, la formule de la commission de conciliation, à condition toutefois que cette commission ne soit nommée qu'à la requête des deux parties. Nous recommandons en outre que; la commission de conciliation ait le pouvoir discrétionnaire de faire dans son rapport des recommandations sur les questions de fond en litige ». [1]

Durant les années '60, le recours obligatoire aux comités de conciliation fut légalement aboli au Québec, en Nouvelle-Ecosse (1964) et en Colombie Britannique. D'autres ont changé leurs pratiques administratives : au Nouveau-Brunswick (1962), en Ontario (1962) et au Manitoba, l'exercice de la discrétion administrative rend la création de commissions de conciliation beaucoup moins fréquentes que précédemment.

Deux questions se posent sur les effets de cette diminution du recours obligatoire traditionnel aux commissions de conciliation :

1) Quel effet ce processus a-t-il eu sur le nombre de différends résolus par les officiers de conciliation ?

2) Quel effet a-t-il eu sur le nombre, sur la durée et sur l'amplitude des grèves ?

Des réponses à ces questions ne sont jamais pleinement satisfaisantes et requièrent un jugement personnel qui demeure contestable. Une faiblesse de coordination dans la compilation des statistiques de grèves et des résultats de conciliation rend particulièrement difficile une réponse à la deuxième question. Voyons les résultats en Nouvelle-Ecosse, au Nouveau-Brunswick, et en Ontario.

Nouvelle-Ecosse.

Le nombre de règlements par des officiers de conciliation passe de 65.2% à 83.8% après 1964. Ceci confirme le dire des critiques des commissions de conciliation : la disponibilité des commissions réduisait la probabilité des règlements de conflits par les officiers ou par les parties eux-mêmes. D'autre part le changement dans la loi ne produit pas une hausse dans les activités de grève.

Nouveau-Brunswick.

À partir du milieu de 1962, le Nouveau-Brunswick laisse à la discrétion du Ministre la décision d'accorder ou non l'assistance d'une commission de conciliation. Le changement n'a pas produit un nombre de grèves (légales) plus élevé, et il n'y a pas de raison *a priori* de croire qu'elle a contribué à une hausse d'arrêts de travail illégaux. Le pourcentage des règlements de différends ne dépassant pas la première étape de conciliation passa de 65.9% à 80.2%.

Ontario.

Depuis le mois d'octobre 1962, des comités ne sont nommés que si la demande est faite par les deux parties. L'Ontario a connu un pourcentage moins élevé d'arrêts de travail en 1966 et en 1967 que l'ensemble du Canada. À quel point la nouvelle politique concernant les commissions de conciliation est responsable de ce pourcentage moindre demeure discutable. Ce que l'on peut affirmer cependant, c'est que leschiffres n'indiquent aucune hausse relative dans le nombre et le degré d'arrêts de travail dans les deux ans suivant la décision du Ministre de réduire fortement le nombre de différends qui seraient référés aux commissions de conciliation.

Dans le domaine de la construction en Ontario, la proportion du règlement direct des différends par des conciliateurs passa de 45% - 55% avant 1963, à 32% en 1963 et 1964. Le taux remonta ensuite aux premiers pourcentages en 1965. Il semble qu'après un rajustement de deux ans, les règlements reprirent leur allure normale, ce qui nous permet d'affirmer que l'abolition du recours obligatoire n'a pas eu d'effets néfastes quant au règlement des différends.

Les tableaux indiquent premièrement que l'abolition des commissions de conciliation n'a pas amené une hausse dans le nombre ou l'amplitude des grèves dans l'industrie de la construction pendant les deux années suivant le changement. La hausse accusée en 1963 est plutôt due à la concentration de négociations dans des secteurs majeurs.

Deuxièmement, les parties eux-mêmes arrivaient à une plus grande proportion d'ententes une fois que leurs officiers avaient fait leur effort de conciliation. Cette conclusion suit nécessairement puisque le nombre d'arrêts de travail n'a pas augmenté même si le taux de règlement provenant directement des commissions de conciliation avait diminué sensiblement. Mais la proportion de règlements directement négociés par les conciliateurs accusa une baisse pendant les deux années suivant l'élimination des commissions obligatoires.

Ces deux points résument l'expérience qu'à connu les autres industries après 1966, en ajoutant que la forte réduction des différends référés aux commissions de conciliation n'a pas augmenté la proportion des règlements directs des conciliateurs. Il faut cependant attendre les résultats d'une plus longue expérience avant de tirer des conclusions totalement fiables. Ces rapports n'expliquent que deux ans d'analyse après le changement affectant toutes les industries.

En somme les provinces qui en font l'expérience sont satisfaites : la réduction des recours obligatoires bénéficie à la négociation collective, et n'augmentent pas l'incidence ou l'ampleur des grèves.

La recommandation de l'Équipe spécialisée citée au début de l'article, si elle est acceptée par le gouvernement fédéral, emmènera une autre réduction substantielle du nombre de commissions obligatoires.

(1) Équipe spécialisée en relations du travail.*Les relations du travail au Canada,* Ottawa. Imprimeur de la Reine, 1969, page 186.

Conciliation: The End of Compulsory Boards

W. B. Cunningham

The Woods' Report has recommended the abolition of compulsory conciliation boards. The recent de-emphasis on compulsory conciliation boards in the provinces of Nova Scotia, New Brunswick and Ontario by legislative changes and administrative practices has led to certain conclusions. Experience has shown that the benefits to collective bargaining have been desirable, and that the incidence and/or magnitude of strikes have not increased.

Introduction

« We recommend that the secondary stage of intervention marked by the conciliation board be retained, but that such a board be appointed only at the request of both parties. We further recommend that the conciliation board have discretion whether or not it reports recommendations on substantive issues in dispute. » [1]

For more than a half a century Canadian public policy emphasized a compulsory resort to conciliation boards prior to work stoppages. The extension of this policy in the 1940's to embrace nearly all disputes in nearly all jurisdictions eventually led to a growing volume of criticism in the 1950's. During the 1960's several provinces substantially altered their policy in the direction of de-emphasizing the role of compulsory boards.

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1. Task Force on Labor Relations, *Canadian Industrial Relations,* Queen's Printer, Ottawa, 1969, p. 169.

Some provinces made formal legislative changes. Others changed their administrative practices. In the first category are British Columbia, Quebec, and Nova Scotia. British Columbia has recently established a new form of government intervention, Quebec abolished compulsory boards, Nova Scotia made them available only at the request of both parties. In the second category are New Brunswick, Ontario, and Manitoba, where the exercise of administrative discretion now makes conciliation boards much less common than in earlier years.

There are two obvious questions to ask about the effects of this reduced reliance upon the traditional compulsory second-tier of conciliation.

1. What has been the result on the number of disputes settled by conciliation officers ?

2. What has been the result on the number, duration, and size of strikes ?

Answers to such questions are never fully satisfactory and require personal judgments with which all persons may not fully agree. A lack of co-ordination in the recording of strike statistics and conciliation results makes the second question particularly difficult. And differences in record keeping, definitions, legislation, and administrative policies require much caution in any attempt to draw inter-provincial comparisons.

The next three parts present some results for Nova Scotia, New Brunswick, and Ontario respectively. For Ontario the results are presented in a somewhat different form and in more detail than for the two smaller provinces.

Nova Scotia

In 1964 Nova Scotia amended its *Trade Union Act* to make the appointment of conciliation boards conditional upon the request of both parties to a dispute. If there was no such request and thus no board the legal restraint on a work stoppage ceased twenty-one days after the conciliation officer made his report to the Minister.

Table 1 shows the volume of conciliation, the number of disputes going to boards, and work stoppages. There was no obvious trend in the fluctuating number of disputes over the ten-year period.

TABLE 1 — VOLUME OF CONCILIATION, NUMBER OF DISPUTES GOING TO BOARDS AND WORKS STOPPAGES IN NOVA SCOTIA : 1958 - 1967

Fiscal Year, Ending Mar. 31	Total Disputes *	Settled : No Board *	Number of Boards Appointed	Work Stoppages Total	Work Stoppages After Conciliation
1958	53	44	6	n.a.	n.a.
1959	50	38	10	18	2
1960	62	44	14	16	1
1961	64	40	22	12	4
1962	57	28	26	21	5
1963	50	26	15	20	2
1964	49	31	18	13	1
1965	47	39	2	15	4
1966	66	58	1	26	4
1967	60	48	5	34	5
Totals	558	396	119	175	28
Average	55.8	39.6	11.9	19.3	3.1

Source : *Annual Reports,* Dept. of Labour, N.S.
*Total disputes at the officer stage *less* number pending with the officer at end of period. "Settled" means agreement reached during the period with no intervention beyond the conciliation officer ; includes some agreements reached after a strike.

The number of conciliation boards had increased from six in 1958 to twenty-six in 1962, then declined precipitously following the 1964 amendment. Most of the work stoppages took place prior to completion of conciliation, many of them being wildcat strikes in coal mining. The small number of lawful strikes restricts attempts to make generalizations.

Table 2 focuses attention upon the rate of settlements at the officer stage. Critics of compulsory boards have often argued on an *a priori* basis that their availability reduced the likelihood of settlements achieved by the officers or by the parties themselves. The Nova Scotia experience is consistent with this criticism. In the seven years prior to March, 1964, when boards were compulsory, the disputing parties reached agreements with the help of officers in 65.2% of the disputes that went to conciliation. In the following three years when boards were no longer compulsory there was an 83.8% settlement rate with no intervention beyond the conciliation officer.

TABLE 2 — PERCENTAGE OF TOTAL DISPUTES SETTLED WITHOUT REFERRAL TO A CONCILIATION BOARD NOVA SCOTIA : 1958 - 1967

Fiscal Year Ending Mar. 31	$\frac{\text{Settlements}}{\text{Total Disputes}} \times 100$
1958	83.0%
1959	76.0%
1960	71.0%
1961	62.5%
1962	49.1%
1963	52.0%
1964	65.3%
1965	83.0%
1966	87.9%
1967	80.0%
10 Year Ave.	71.0%
1958-1964	65.2%
1965-1967	83.8%

Source : table 1

This sharp increase in the settlement rate does not necessarily mean that the officers were more directly effective than when they had functioned within the impending shadow of a conciliation board. Some of the settlements were obtained after the officer had withdrawn his services, a few were obtained after a legal strike. But if the average pre-1964 settlement rate had applied to the 173 disputes after 1964 there would have been about another 32 boards appointed in those three years. Assuming that the purpose of the boards was to obtain agreements and lessen the number of strikes, the absence of these boards that otherwise would have been appointed has had no noticeable adverse impact in Nova Scotia. Without the boards the parties reached settlements either with the help of officers or by themselves after the officers withdrew.

In the last three years of the period there were 28 disputes not reported as settled at the officer stage. Of these, 15 disputes lapsed, about

double the number at this stage for any previous three years period. This suggests that the compulsory boards may have prolonged the existence of some bargaining relationships that could not be sustained apart from the formal board requirements. In the remaining 13 disputes the officer had withdrawn his services, the bargaining relationship continued, but no agreement had been reached by the end of the reporting year. In general the eventual outcome of such disputes, unless a strike results, goes unrecorded in official government records.

There were 13 lawful strikes in the last three years of the period (See table 1). One of these followed a conciliation board report and during the strike the Minister appointed an industrial inquiry commission. At least 7 were settled during further voluntary conciliation by officers of the Department of Labour. One strike remained in progress at March 31, 1967.

In the three years after 1960, a time when boards were compulsory, there were 11 strikes following board reports. In the three years when boards were not compulsory there were 12 strikes following an officer's intervention. The change in the law did not lead to any surge in strike activity.

New Brunswick

A departure from the traditional two stages of compulsory conciliation occurred first in New Brunswick. Without formally amending its Labour Relations Act a significant change in administrative policy became effective early in 1962. For a short period the Minister of Labour followed a policy of refusing all requests for boards. This was changed after a few months to a policy that could be called « no boards except . . . » The exceptions were not explicitly formulated. In general if both parties requested a board, or if there was a request by one party in a dispute of more than ordinary public interest, a board might be appointed. The parties did not know beforehand whether or not the Minister would grant a request. The fiscal year, April 1, 1962 to March 31, 1963 was the first full year of experience with the new policy.

Tables 3 and 4 (New Brunswick) are similar to Tables 1 and 2 (Nova Scotia) and suitable, if desired, for making comparisons. The total disputes in New Brunswick show a regular two year fluctuation (except for 1965) in the volume of activity ; and a rise in the number towards the end of the period, the latter primarily a reflection of some major construction

projects. The two-year fluctuation is repeated in the number of settlements, again 1965 excepted. New Brunswick had never appointed many boards, but the changed policy after 1962 is obvious in the table. As in Nova Scotia though to a lesser extent the majority of work stoppages were prior to conciliation. Many of these were in the last two years of the period and took place at major construction sites such as the Mactaquac Dam and the Belledune smelter.

TABLE 3 — VOLUME OF CONCILIATIONS. NUMBER OF DISPUTES GOING TO BOARDS AND WORK STOPPAGES IN NEW BRUNSWICK 1958 - 1967

Fiscal Year Ending Mar. 31	Total * Disputes	Settled * No Board	Number of Boards Appointed	Work Stoppages	
				Total	After Conciliation
1958	25	18	6	3	2
1959	20	10	8(a)	3	–
1960	35	25	8	2	2
1961	23	11	11	4	2
1962	35	27	6	5	2
1963	23	13	1	3	–
1964	31	27	1(b)	3	2(b)
1965	34	31	–	5	2
1966	61	53	2	14	7(c)
1967	48	34	1	14	2(c)
TOTALS	335	249	44	56	21
Average	33.5	24.9	4.4	5.6	2.1

Source : *Annual Reports,* Department of Labour, N.B.
* See note to table 1 (N.S.)
a) A one-man inquiry commission, no prior conciliation officer
b) A one-man inquiry commission, followed by a strike
c) One strike after a conciliation board reported

During the first five years, 1958-1962, inclusive, conciliation boards were regularly appointed at the request of one party and work stoppages were illegal until seven days after a board's report. In this period there were 8 stoppages following board reports. In the last five years, 1963-1967, there were 13 stoppages following conciliation. Since 3 of these disputes involved boards or inquiry commissions after the officer's report, there were 10 stoppages following the officer stage only. The number of disputes in the second five-year period was more than 40% higher than in

TABLE 4 — PERCENTAGE OF TOTAL DISPUTES SETTLED WITHOUT REFERRAL TO A CONCILIATION BOARD
NEW BRUNSWICK : 1958 - 1967

Fiscal Year Ending Mar. 31	$\frac{\text{Settlements}}{\text{Total Disputes}} \times 100$	
1958	72.0%	
1959	50.0%	
1960	71.4%	
1961	47.8%	
1962	77.1%	
1963	56.5%	
1964	87.1%	
1965	91.2%	
1966	86.8%	
1967	70.8%	(81.0)
10 Year Ave.	74.3%	(75.7)
1958-1962	65.9%	
1963-1967	80.2%	(82.7)

SOURCE : table 3

the previous five years. Obviously the change in policy did not generate more (lawful) strikes ; and there is no *a priori* reason to think that it contributed to the rise of unlawful stoppages. As in Nova Scotia, the parties continued to reach agreements in the relative absence of boards and without any significant change in work stoppages.

New Brunswick had a longer experience with its reduced reliance on compulsory board than did Nova Scotia. The percentage of settlements reached with no more than one stage of conciliation increased from 65.9% to 80.2%, about the same as in Nova Scotia. (See table 4). The annual percentages, for some unknown reason, rose and fell as the total number of disputes rose and fell.

There are three further comments to make about these results :

1. The increase in the settlement rate after the change in policy would be less if agreements reached after a strike were excluded. This

calculation would show an average settlement rate of about 77.5% for Nova Scotia and 75.1% for New Brunswick. These still represent increases of about 9-12 percentage points.

2. Reported figures on conciliation results must be treated with much caution. The cautions are not spelled out in this paper. The general point may be illustrated with reference to the 49 disputes in 1967 reported for New Brunswick. Seven of these referred to one union seeking a contract with seven garages in one city, and were dealt with unsuccessfully by one officer. In reality it was one dispute. If recorded in table 4 as one dispute the settlement rate for that year would have been 81.0% instead of 70.8% and the 1963-1967 average rate would have been 82.7% instead of the 80.2% shown in the table.

3. An earlier study of the New Brunswick experience, covering nearly ten years prior to 1957, showed an average settlement rate of only 45.3% at the officer stage. This suggests that the parties and the conciliation officers have developed through experience a greater maturity and skill in collective bargaining.

Ontario

Between 1958 and 1967 Ontario made two major changes in its reliance upon compulsory boards. The first was a result of unrest in the construction industry. An amendment to the Labour Relations Act in 1962, following recommendations in the Goldenberg Report, eliminated the compulsory board stage in the construction industry. Since October, 1962, boards have been appointed only when requested by both parties.

In February, 1966, a change in administrative policy moved Ontario practices in the direction of those introduced earlier in New Brunswick and Manitoba. The Minister began to make much more use of his discretionary power to refuse requests for boards. There is no explicit criteria for determining in which disputes to appoint a board. In general they are more likely to be appointed in public interest disputes such as those in utilities and municipalities ; in pattern-setting disputes ; and some disputes in which the parties are seeking a first agreement. But in none of these is it certain that the Minister will appoint a board.

2. W.B. CUNNINGHAM, *Compulsory Conciliation and Collective Bargaining : The New Brunswick Experience*, Montréal, N.B. Dept. of Labour and McGill Univ., 1958, pp. 22-23.

Ontario changed its policy because of a developing disenchantment with the usefulness of conciliation boards. The delays implicit in the procedures frequently irritated the parties, particularly the unions. There was a growing belief that the easy availability of boards reduced the prestige and influence of the officers, that the two-tier conciliation requirement had become too rigid and formal, and that too often the parties used the procedures in an effort to obtain a bargaining advantage rather than a settlement.

In Ontario there was an increasing number of so-called « wash-out » reports, ones that contained no recommended terms of settlement. The usefulness of a report with recommendations is an open question. There is no question, however, that it is much easier to write a report that makes no judgment about the issues. By making specific recommendations a board chairman runs the high risk of eventually antagonizing one of the parties and of becoming unacceptable as a chairman of future boards. When fees from board appointments became a significant income supplement, as they had become for some chairmen of boards in Ontario, writing « wash-out » reports reduces the risk of future unacceptability and the consequent loss of income from this source. Furthermore, if a chairman does not write recommendations neither party nominee is under any pressure to write a dissenting minority report, as he would be if a board had made recommendations that were unacceptable to the party he represented. Whatever the reasons may have been, it appears that the above influences were operative, and « wash-out » reports had become common in Ontario. No accurate data on their number is available but estimates place them at more than 50% in some years. The Department of Labour saw no value in such reports. Their frequency added to the disenchantment with concilation boards.

Table 5 shows the yearly disposition of disputes at the conciliation officer stage. The total had been increasing since 1961, but at the end of the period it was about the same as in 1958, ten years earlier. The decline and subsequent rise was related to the shifts in the level of economic activity.

Over the ten year period officers reported settlements in slightly more than 50% of the disputes. This settlement rate cannot be compared directly with those given earlier for Nova Scotia and New Brunswick. If calculated in the same manner it would be a higher figure. There is also a question about the reliability of the 1961 figures. In general the officers were more

successful during years when the unemployment rates were higher. But apart from 1961 the settlement rate showed a remarkably small variation. Despite the major reductions in the number of disputes legally required to go to boards, first in the construction industry (1962) and then generally (1966) the results showed no noticeable effect on the ability of officers to achieve direct settlements.

Apart from a small number of disputes that lapsed (usually less than one per cent) the Minister decided either for or against a board. The last four rows of table 5 show these dispositions. The effects of the 1962 amendment and the 1966 policy change are clearly evident in these figures. Of the active disputes unsettled at the end of the officer's formal intervention, about 86% were referred to boards in 1959 ; by 1967 only about 14% went to boards. (Not shown directly in table 5)

The « no board » figures for 1963-1965 reflect the abolition of compulsory boards in the construction industry. The 1966-1967 figures reflect in addition the new administrative policy.

TABLE 6 — CONCILIATION BOARD DISPOSITIONS
ONTARIO : 1958-1967

Year	Total	Settled (a)		Not Settled (b)	
		No.	%	No.	%
1958	399	160	40.1	239	59.9
1959	365	203	55.6	162	44.4
1960	335	183	54.6	152	45.4
1961	369	179	48.5	190	51.5
1962	392	180	45.9	212	54.1
1963	368	167	45.4	201	54.6
1964	385*	212	55.1	172	44.6
1965	411*	195	47.4	215	52.4
1966	294	133	45.2	161	54.8
1967	102	48	47.1	54	52.9
Total	3420	1660	48.5	1758	51.4

SOURCE : For 1958-1965, Carrothers-Palmer Report, table 26, p. 209 ; table 28, p. 213.

For 1965-1967, Ontario Department of Labour.

a) Includes agreements reached prior to board hearings.

b) Includes a small number of disputes that lapsed, about one percent in total.

* One dispute was not further classified.

TABLE 5 — CONCILIATION RECORD ONTARIO : 1958 - 1967

	Calendar Year Ending Dec. 31										
	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	Total
1. Total Dispositions: Officer Stage	1214	1120	928	849	991	976	1032	1175	1172	1226*	10,683
A. Settled Directly	601	613	489	509	507	485	482	548	628	593	5455
% of total	49.5	54.7	52.7	60.0	51.1	49.7	46.7	46.6	53.6	48.4	51.1
B. Not Settled Directly											
a) Lapsed	11	6	7	8	12	7	8	11	14	8	92
% of total	.9	.5	.8	.9	1.2	.7	.8	.9	1.2	.7	.9
b) No Board	130	70	79	81	80	145	148	220	274	539	1766
% of total	10.7	6.3	8.5	9.5	8.0	14.9	14.3	18.7	23.4	44.0	16.5
c) To conciliation board	472	431	353	251	392	339	394	396	256	84	3368
% of total	38.9	38.5	38.0	29.6	39.6	34.7	38.1	33.7	21.8	6.9	31.5

SOURCE : For 1958-1965 : Carrothers, Palmer. *Report of a Study on the Labour Injunction in Ontario.* Table 8, p. 178.

SOURCE : For 1966-1967 : Ontario Department of Labour.

* Two disputes at the officer stage were followed by mediation.

Table 6 shows the conciliation board dispositions. For the ten years slightly less than half of the total disputes (48.5%) were settled at the board stage. This result by itself is not an adequate measure of the effectiveness of the boards in achieving settlements. It includes those disputes in which the parties reached agreement prior to board hearings ; these disputes should be subtracted from the total settled by boards. On a fiscal year basis settlements of this type averaged 34 a year. Subtracting 340 from the total of 1660 « Settled » gives 1320 disputes : a reasonable approximation of the number of disputes that boards were able to settle directly. Direct settlements, as a percentage of total dispositions, were approximately 38.6% rather than the 48.5% shown in the table.

It is surprising that the abolition of compulsory boards in the construction industry and the newer policy of appointing fewer boards in other industries did not seem to alter the rate of board settlements. In six of the last seven years the settlement rate ranged between 45.2% and 48.5%, 1964 being the exception. If the usefulness of boards was measured only by their ability to get direct settlements, the justification for retaining compulsory boards on an *ad hoc* selective basis was no greater than for retaining all boards. This conclusion, however, is based on only a two-year experience with the new general policy on appointing boards.

Table 7 is relevant to the question of the extent to which work stoppages reflected the reduction in compulsory boards. In 1966 the Department began its new policy of ministerial discretion. In that year the number of strikes and the number of employees involved were much higher than in the preceding years. Except for 1958, the duration in man-days was also much higher. In 1967 although the first two measures declined, all three measures remained high relative to previous years. Thus during the first two years following the new policy Ontario had more work stoppages, involving more workers and a greater time loss, than in any previous two-year period.

There are many possible explanations for these results apart from the reduction in the general availability of conciliation boards. The table clearly indicates that the Ontario results in 1966 and 1967, when expressed as a percentage of the totals for all Canada, in general were a smaller proportion than previously.

With the exception of 1959, the number of stoppages in Ontario was a smaller percentage of total stoppages in Canada in 1966 and 1967

TABLE 7 — WORK STOPPAGES : ONTARIO AND CANADA : 1958-1967

Year	*Number*			*Employees Involved*		*Duration in Man-Days*	
	Canada (1)	Ontario (2)	2+1	Ontario	% of all in Canada	Ontario	% of all in Canada
1958	259	132	51.0	58,467	53.2	1,918,030	67.9
1959	216	104	48.1	25,540	27.4	267,730	12.6
1960	274	156	56.9	24,085	49.0	337,370	45.9
1961	287	166	57.8	39,817	40.8	644,770	47.8
1962	311	172	55.3	32,985	44.6	424,590	29.6
1963	332	181	54.5	37,744	45.8	364,190	39.7
1964	343	188	54.8	52,442	51.5	712,095	44.9
1965	501	269	53.4	92,633	54.1	1,343,001	57.0
1966	617	299	48.5	123,450	30.0	1,428,098	27.6
1967	438	220	50.2	64,357	15.6	1,631.260	40.6

SOURCE : 1968-1965 :Carrothers-Palmer Report, table 37, p. 228.
1966-1967 : Ontario Department of Labour.

Figures for Canada, and the calculation of Ontario percentages, are based on figures reported monthly in the *Labour Gazette*.

than in the earlier years. The same is true for the number of employees involved. Indeed in 1967 the 64,357 employees involved, while constituting the third highest number for the period, was only 15.6% of the Canadian total, a much smaller percentage than found in any previous year. An inspection of the third measure, duration in man-days, shows that the time lost in 1966, as a percentage of the Canadian total, was the second lowest, and in 1967 the fifth lowest, of the ten years covered. Obviously the increases in the absolute values of the Ontario measures during 1966 and 1967 were part of the national pattern of increased stoppages, but relatively the Ontario increases were smaller.

To what extent the new policy on conciliation boards was responsible for the lower relative increase is an open question. What can be stated positively is that the evidence does not indicate any relative increase in the number and degree of work stoppages in the two years after the Minister severely reduced the number of disputes referred to boards.

CONSTRUCTION : ONTARIO

Usually there is not enough information to classify conciliation results by industry. The Carrothers-Palmer *Report of a Study on the Labour Injunction in Ontario* (Vol. 1) provided detailed information for the 1958 - 1965 calendar years, permitting the selection and rearrangement of the data that follows.

Following the abolition of compulsory boards in 1962 there was a decline in the proportion of direct settlements achieved by conciliation officers. Prior to 1963 they obtained settlements in about 45% to 55% of the construction industry disputes. In 1963 and 1964 this rate fell to about 32%, then rose again in 1965 to its earlier level.

There is no obvious explanation for this drop in the officer settlement rate. It does not appear to be the result of the two-year bargaining pattern nor of economic trends in the industry. With their newly won freedom from compulsory boards the parties had to readjust their bargaining tactics. Prior to the change a failure to agree at the officer stage meant the likely appointment of a board with its inherent time-consuming procedures and the uncertain timing and content of its report. After the change a failure to agree meant the prospect of a work stoppage. An agreement requires the consent of two parties ; one party alone can prevent an agreement. It appears that at least one party, perhaps the unions, feared a possible work stoppage less than it feared a conciliation board.

TABLE 8 — OFFICERS DISPOSITIONS : CONSTRUCTION INDUSTRY

ONTARIO 1958-1965

Year	Number of Disputes	Percent of all Disputes	Percent of all Employees	Ave. No. of Employees Per Dispute		Dispositions*		
Year				Construction	All Disputes	% Settled	% No Board	% To Board
1958	161	13.3	7.5	112	197	44.7	21.7	31.7
1959	118	10.5	6.9	78	115	54.2	22.0	23.7
1960	90	9.7	6.7	76	109	47.8	25.6	26.7
1961	117	13.8	11.9	148	171	50.4	17.1	32.5
1962	114	11.5	8.2	98	137	47.4	31.6	17.5
1963	147	15.1	22.8	203	134	32.7	61.2	5.4
1964	126	12.2	4.4	69	190	31.7	65.9	2.4
1965	196	16.7	18.6	170	152	45.9	53.6	0.5

SOURCE : Carrothers-Palmer Report. Compiled from tables on pages 186, 189, 190 and 192.

* Percentages do not necessarily total 100 because some disputes lapsed.

In 1965 the officers again achieved settlements at about the rate obtained before boards were abolished. The two previous years may have been merely a transitional period during which the parties were experimenting within the new, less restrictive, legal framework.

TABLE 9 — BOARD DISPOSITIONS IN CONSTRUCTION INDUSTRY ONTARIO : 1958-1965

Year	Number of Boards	% of All Ont. Boards	% Settled
1958	41	7.9%	46.3%
1959	33	6.4%	48.5%
1960	20	4.4%	40.0%
1961	43	13.3%	44.2%
1962	25	3.8%	44.0%
1963	8	0.5%	25.0%
1964	5	0.7%	100.0%
1965	1	0.1%	100.0%

SOURCE : Carrothers-Palmer Report. Tables 30, 32.

There were few boards in the construction industry after they became voluntary (See table 9). The ones appointed in 1964 and 1965 were successful in reaching agreements. The settlement rate by boards prior to the change was lower than that achieved in the manufacturing industry.

WORK STOPPAGES : CONSTRUCTION

It has already been pointed out that after compulsory boards were abolished in late 1962 conciliation officers were less successful in directly settling disputes in this industry. This means that in 1963 and 1964 a larger proportion of disputes reached the stage where work stoppages no longer unlawful. An obvious question is whether there was any substantial change in the number and size of stoppages in the construction industry in these two years.

TABLE 10 — WORK STOPPAGES : CONSTRUCTION INDUSTRY
ONTARIO 1958-1967

Year	Stoppages	Total % of Ont.	% of Ont. Total Employees Involved :	Duration in % of Ont. Total Man-Days
1958	37	28.0%	40.1%	26.7%
1959	27	26.0	13.1	20.0
1960	69	44.2	45.5	50.0
1961	62	37.4	33.7	49.5
1962	63	36.6	26.6	11.4
1963	63	34.8	31.0	40.4
1964	58	30.9	12.3	8.5
1965	85	31.7	14.0	14.2
1966	75	25.1	14.2	7.8
1967	64	29.1	36.6	45.8

SOURCE : For 1958-1965, Carrothers-Palmer Report
For 1966-1967, Ontario Department of Labour

Table 10 shows that the absolute number of stoppages in construction in 1963 remained the same as in the previous year and in 1964 the number was slightly lower. In these two years these stoppages were a falling proportion of all stoppages. Employees involved, as a proportion of those in all stoppages, rose in 1963 then fell in 1964 to the lowest ratio in any of the ten years. Although having risen in 1963 the ratio was much lower (31.0%) than it was in 1958 (40.1%) or in 1960 (45.5%). The duration in man-days showed a similar pattern. In 1963 the ratio rose very sharply in construction, but not as high as it had been in 1960 and 1961 ; then it fell even more sharply in 1964 to less than 10%, much lower than in any earlier year.

This record suggests two conclusions. First, the abolition of compulsory boards did not lead to an increase in the number or size of strikes in the construction industry during the two years that followed the change. The increase that occurred in 1963 in two of the measures was a normal result of the concentration of bargaining for major agreements in that year, and the ratios were not as high as in some earlier years. In 1964 the two measures were lower than in any earlier year.

Second, the parties themselves were reaching a larger proportion of agreements after the officers had completed their conciliation efforts. This conclusion necessarily follows because the number of work stoppages did not increase even though the officers' direct settlement rate was substantially lower.

For the five-year period after 1962 stoppages in construction were 29.8% of all stoppages, compared to 35.3% in the earlier five-year period. This re-enforces the previous conclusion that the change in the legislation did not increase the number of stoppages relative to those in other industries. The number in construction rose about 50% in 1965 over 1964, but the other measures indicate that in a year of major bargaining, stoppages in construction accounted for a surprisingly low porportion of employees involved and of the duration in man-days in all disputes. If the results in 1965 had followed the 1961 and 1963 pattern (a two-year pattern that re-appeared in 1967) the ratio of employees involved would have been at least double, and the ratio of duration in man-days about triple, the actual 1965 figures.

In 1966 all three ratios remained low. Stoppages in construction were about one-quarter of total stoppages (the lowest ratio for the ten years) ; involved 14.2% of all employees (one of the four ratios below 26%) ; and contributed only 7.8% of the total duration in man-days (again the lowest ratio for the ten years).

These favourable results did not continue in the last year of the period. Although the proportion of stoppages in construction to total stoppages in 1967 remained below 30%, lower than in most years, there were only two earlier years in which the other two ratios were higher. These earlier years, however, were ones before 1962. Thus there is no reason to attribute the 1967 results to the absence of a compulsory second stage of conciliation.

In summary for Ontario the two general conclusions are :

1. The sharp reduction in the number of disputes going to conciliation boards did not increase the proportion of settlements reached by the officers. In the construction industry the proportion of direct settlements by officers fell during the two years after the elimination of compulsory boards.

2. The elimination of boards as a compulsory second stage in the construction industry, and their later reduction in all industries, did not lead to greater strike activity relative to the experience for all Canada. The available evidence on work stoppages gives no reason to think that their number or size was any greater than it would otherwise have been if the boards had remained compulsory.

One caution is in order. The reported experience for Ontario is limited to slightly less than two years after the general policy change. A longer experience would be preferable before drawing firm conclusions.

Conclusion

Compulsory conciliation boards have been disappearing from the Canadian scene in the past seven years. Those provinces that have abolished them or sharply reduced the numbers appointed are satisfied that the benefits to collective bargaining have been desirable and that the changes have not increased the incidence or magnitude of strikes. The experience reported above supports this opinion. The parties were able to reach agreements without the assistance of conciliation boards and without any adverse results in the experience with work stoppages.

The Task Force recommendation quoted at the beginning of this paper, if accepted by the Federal Government, will mean another substantial reduction in the number of compulsory boards. When that occurs there may be some nostalgic regrets for the impending demise of an old, well-known, and distinctively Canadian procedure. But not many.

LA FIN DU RECOURS OBLIGATOIRE AUX COMMISSIONS DE CONCILIATION

« Nous recommandons de retenir, au second stade d'intervention, la formule de la commission de conciliation, à condition toutefois que cette commission ne soit nommée qu'à la requête des deux parties. Nous recommandons en outre que la commission de conciliation ait le pouvoir discrétionnaire de faire dans son rapport des recommandations sur les questions de fond en litige ». [1]

Durant les années '60, le recours obligatoire aux comités de conciliation fut légalement aboli au Québec, en Nouvelle-Écosse (1964) et en Colombie Britannique. D'autres ont changé leurs pratiques administratives : au Nouveau-Brunswick (1962),

(1) Équipe spécialisée en relations du travail. *Les relations du travail au Canada*, Ottawa. Imprimeur de la Reine, 1969, page 186.

en Ontario (1962) et au Manitoba, l'exercice de la discrétion administrative rend la création de commissions de conciliation beaucoup moins fréquentes que précédemment.

Deux questions se posent sur les effets de cette diminution du recours obligatoire traditionnel aux commissions de conciliation :

1) Quel effet ce processus a-t-il eu sur le nombre de différends résolus par les officiers de conciliation ?

2) Quel effet a-t-il eu sur le nombre, sur la durée et sur l'amplitude des grèves ?

Des réponses à ces questions ne sont jamais pleinement satisfaisantes et requièrent un jugement personnel qui demeure contestable. Une faiblesse de coordination dans la compilation des statistiques de grèves et des résultats de conciliation rend particulièrement difficile une réponse à la deuxième question. Voyons les résultats en Nouvelle-Écosse, au Nouveau-Brunswick, et en Ontario.

Nouvelle-Écosse.

Le nombre de règlements par des officiers de conciliation passe de 65.2% à 83.8% après 1964. Ceci confirme le dire des critiques des commissions de conciliation : la disponibilité des commissions réduisait la probabilité des règlements de conflits par les officiers ou par les parties eux-mêmes. D'autre part le changement dans la loi ne produit pas une hausse dans les activités de grève.

Nouveau-Brunswick.

À partir du milieu de 1962, le Nouveau-Brunswick laisse à la discrétion du Ministre la décision d'accorder ou non l'assistance d'une commission de conciliation. Le changement n'a pas produit un nombre de grèves (légales) plus élevé, et il n'y a pas de raison *a priori* de croire qu'elle a contribué à une hausse d'arrêts de travail illégaux. Le pourcentage des règlements de différends ne dépassant pas la première étape de conciliation passa de 65.9% à 80.2%.

Ontario.

Depuis le mois d'octobre 1962, des comités ne sont nommés que si la demande est faite par les deux parties. L'Ontario a connu un pourcentage moins élevé d'arrêts de travail en 1966 et en 1967 que l'ensemble du Canada. À quel point la nouvelle politique concernant les commissions de conciliation est responsable de ce pourcentage moindre demeure discutable. Ce que l'on peut affirmer cependant, c'est que les

chiffres n'indiquent aucune hausse relative dans le nombre et le degré d'arrêts de travail dans les deux ans suivant la décision du Ministre de réduire fortement le nombre de différends qui seraient référés aux commissions de conciliation.

Dans le domaine de la construction en Ontario, la proportion du règlement direct des différends par des conciliateurs passa de 45% - 55% avant 1963, à 32% en 1963 et 1964. Le taux remonta ensuite aux premiers pourcentages en 1965. Il semble qu'après un rajustement de deux ans, les règlements reprirent leur allure normale, ce qui nous permet d'affirmer que l'abolition du recours obligatoire n'a pas eu d'effets néfastes quant au règlement des différends.

Les tableaux indiquent premièrement que l'abolition des commissions de conciliation n'a pas amené une hausse dans le nombre ou l'amplitude des grèves dans l'industrie de la construction pendant les deux années suivant le changement. La hausse accusée en 1963 est plutôt due à la concentration de négociations dans des secteurs majeurs.

Deuxièmement, les parties eux-mêmes arrivaient à une plus grande proportion d'ententes une fois que leurs officiers avaient fait leur effort de conciliation. Cette conclusion suit nécessairement puisque le nombre d'arrêts de travail n'a pas augmenté même si le taux de règlement provenant directement des commissions de conciliation avait diminué sensiblement. Mais la proportion de règlements directement négociés par les conciliateurs accusa une baisse pendant les deux années suivant l'élimination des commissions obligatoires.

Ces deux points résument l'expérience qu'à connu les autres industries après 1966, en ajoutant que la forte réduction des différends référés aux commissions de conciliation n'a pas augmenté la proportion des règlements directs des conciliateurs. Il faut cependant attendre les résultats d'une plus longue expérience avant de tirer des conclusions totalement fiables. Ces rapports n'expliquent que deux ans d'analyse après le changement affectant toutes les industries.

En somme les provinces qui en font l'expérience sont satisfaites : la réduction des recours obligatoires bénéficie à la négociation collective, et n'augmentent pas l'incidence ou l'ampleur des grèves.

La recommendation de l'Équipe spécialisée citée au début de l'article, si elle est acceptée par le gouvernement fédéral, emmenera une autre réduction substantielle du nombre de commissions obligatoires.